

3-3-2014

Olsen v. State Respondent's Brief Dckt. 41499

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Olsen v. State Respondent's Brief Dckt. 41499" (2014). *Idaho Supreme Court Records & Briefs*. 4399.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/4399

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

COPY

—

10

F

1

Summary

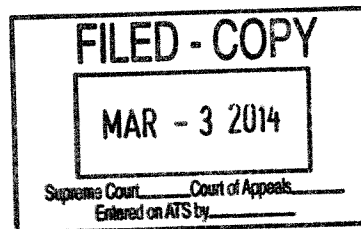


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of the Proceedings	1
ISSUE	3
ARGUMENT	4
Olsen Has Failed To Show The District Court Erred In Summarily Dismissing His Petition For Post-Conviction Relief	4
A. Introduction.....	4
B. Standard Of Review	4
C. Olsen Failed To Establish A Double Jeopardy Violation.....	5
CONCLUSION	9
CERTIFICATE OF SERVICE.....	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Aeschliman v. State</u> , 132 Idaho 397, 973 P.2d 749 (Ct. App. 1999)	4
<u>Cooper v. State</u> , 96 Idaho 542, 531 P.2d 1187 (1975).....	5
<u>Downing v. State</u> , 132 Idaho 861, 979 P.2d 1219 (Ct. App. 1999)	5
<u>Esquivel v. State</u> , 149 Idaho 255, 233 P.3d 186 (Ct. App. 2010).....	1
<u>Martinez v. State</u> , 126 Idaho 813, 892 P.2d 488 (Ct. App. 1995).....	5
<u>Mata v. State</u> , 124 Idaho 588, 861 P.2d 1253 (Ct. App. 1993)	5
<u>Matthews v. State</u> , 122 Idaho 801, 839 P.2d 1215 (1992)	4
<u>Ohio v. Johnson</u> , 467 U.S. 493 (1984).....	6
<u>State v. Avelar</u> , 132 Idaho 775, 979 P.2d 648 (1999)	6
<u>State v. Beck</u> , 128 Idaho 416, 913 P.2d 1186 (Ct. App. 1996)	1
<u>State v. Ewell</u> , 147 Idaho 31, 205 P.3d 680 (Ct. App. 2009).....	7
<u>State v. Galaviz</u> , 104 Idaho 328, 658 P.2d 999 (Ct. App. 1983)	6
<u>State v. Hansen</u> , 127 Idaho 675, 904 P.2d 945 (Ct. App. 1995)	4
<u>State v. Helms</u> , 143 Idaho 79, 137 P.3d 466 (Ct. App. 2006)	8
<u>State v. Kerrigan</u> , 143 Idaho 185, 141 P.3d 1054 (2006).....	7
<u>State v. Leslie</u> , 146 Idaho 390, 195 P.3d 749 (Ct. App. 2008)	7, 8
<u>State v. Mowery</u> , 128 Idaho 804, 919 P.2d 333 (1996).....	1
<u>State v. Osweiler</u> , 140 Idaho 824, 103 P.3d 437 (2004)	6
<u>State v. Salazar</u> , 95 Idaho 650, 516 P.2d 707 (1973)	7
<u>Witte v. United States</u> , 515 U.S. 389 (1995)	5

STATUTES

I.C. § 18-8005 1, 6, 7, 8

I.C. § 19-2514 6, 7, 8

I.C. § 19-4901 6

I.C. § 19-4906 6

CONSTITUTIONAL PROVISIONS

Article 1, § 13 of the Idaho State Constitution 5

STATEMENT OF THE CASE

Nature of the Case

James Olsen appeals from the district court's order summarily dismissing his petition for post-conviction relief.

Statement of the Facts and Course of the Proceedings

In 2012, the state charged Olsen with aggravated assault, resisting or obstructing officers, and driving under the influence. (See R., pp.34-35; Idaho Data Repository, Elmore County, Case No CR 2012-01748.¹) Because Olsen had at least two prior convictions for driving under the influence within the previous ten years, the state charged him with felony DUI pursuant to I.C. 18-8005(6). (See R., pp.34-35.) The state also charged Olsen with the persistent violator sentencing enhancement, based upon the same two prior DUI convictions, both of which were felonies. (See id.) Olsen pled guilty to felony DUI and the persistent violator sentencing enhancement, and the state dismissed the remaining charges. (See id.) The district court imposed a unified fifteen-year sentence with five years fixed. (See id.)

Olsen did not appeal his conviction or sentence, but filed a *pro se* petition for post-conviction relief. (R., pp.3-10.) Olsen raised a single claim – that his

¹ The district court took judicial notice of the amended information associated with Olsen's underlying DUI case, Elmore County, Case No CR 2012-01748. (R., p.35). Olsen has not augmented the record with any other documents associated with that case. The post-conviction record on appeal does not automatically include the record of the underlying criminal case. Esquivel v. State, 149 Idaho 255, 259, n.3, 233 P.3d 186, 190, n.3 (Ct. App. 2010). Missing portions of the record must be presumed to support the action of the trial court. State v. Mowery, 128 Idaho 804, 805, 919 P.2d 333 (1996); State v. Beck, 128 Idaho 416, 422, 913 P.2d 1186 (Ct. App. 1996).

sentence violated his double jeopardy rights because it punished him twice for the same conduct. (Id.) Specifically, Olsen argued that the state may not utilize the same prior DUI convictions to both enhance a misdemeanor DUI to a felony, and to support the persistent violator sentencing enhancement. (Id.)

After providing notice (R., pp.20-25), the district court summarily dismissed the petition, concluding that Olsen failed to demonstrate that his double jeopardy rights were violated. (R., pp.34-42). Olsen timely appealed. (R., pp.43-46.)

ISSUE

Olsen states the issue on appeal as:

Whether it is permissible under the Fifth Amendment Double Jeopardy Clause of the U.S. Constitution and the Idaho Constitution to pyramid, or aggregate, sentence enhancement provisions so as to increase the range of charging and penalty options more than once in a single prosecution.

(Appellant's brief, p.7.)

The State rephrases the issue as:

Has Olsen failed to show the district court erred in summarily dismissing his petition for post-conviction relief?

ARGUMENT

Olsen Has Failed To Show The District Court Erred In Summarily Dismissing His Petition For Post-Conviction Relief

A. Introduction

Olsen asserts his felony DUI sentence violated his double jeopardy rights because the state relied on the same prior DUI convictions to both elevate his new DUI to a felony, and to charge him with the persistent violator sentencing enhancement. (See generally, Appellant's brief.) Olsen's claim fails because, contrary to his assertion, application of the persistent violator enhancement to the sentence imposed upon Olsen's conviction for felony DUI did not violate double jeopardy. Olsen has therefore failed to show that the district court erred in rejecting this claim, and in summarily dismissing his post-conviction petition.

B. Standard Of Review

On appeal from summary dismissal of a post-conviction petition, the appellate court reviews the record to determine if a genuine issue of material fact exists, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Matthews v. State, 122 Idaho 801, 807, 839 P.2d 1215, 1221 (1992); Aeschliman v. State, 132 Idaho 397, 403, 973 P.2d 749, 755 (Ct. App. 1999). Whether an appellant's constitutional right to be free from double jeopardy has been violated is a question of law subject to free review. State v. Hansen, 127 Idaho 675, 678, 904 P.2d 945, 948 (Ct. App. 1995).

C. Olsen Failed To Establish A Double Jeopardy Violation

Idaho Code Section 19-4906(b) authorizes summary disposition of an application for post-conviction relief on the court's own motion. Summary disposition is appropriate when the applicant's evidence has raised no genuine issue of material fact which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Downing v. State, 132 Idaho 861, 863, 979 P.2d 1219, 1221 (Ct. App. 1999); Martinez v. State, 126 Idaho 813, 816, 892 P.2d 488, 491 (Ct. App. 1995). If a petitioner fails to present evidence establishing an essential element on which he bears the burden of proof, summary dismissal is appropriate. Mata v. State, 124 Idaho 588, 592, 861 P.2d 1253, 1257 (Ct. App. 1993).

In addition, summary dismissal of post conviction claims is appropriate where the allegations of the petitioner are disproved by the record in the underlying criminal case. "Allegations contained in the application are insufficient for the granting of relief when they are clearly disproved by the record of the original proceedings, or do not justify relief as a matter of law." Cooper v. State, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975).

The Fifth Amendment to the United States Constitution provides that no person shall be "subject for the same offense to be twice put in jeopardy of life or limb." Similarly, Article 1, § 13 of the Idaho State Constitution provides that "[n]o person shall be twice put in jeopardy for the same offense." "The prohibition against double jeopardy encompasses both multiple prosecutions and multiple punishments for the same offense." Witte v. United States, 515 U.S. 389, 391

(1995); State v. Avelar, 132 Idaho 775, 778, 979 P.2d 648, 651 (1999). “The question under the Double Jeopardy Clause whether punishments are ‘multiple’ is essentially one of legislative intent.” State v. Osweiler, 140 Idaho 824, 826-827, 103 P.3d 437, 439-440 (2004) (quoting Ohio v. Johnson, 467 U.S. 493, 499 (1984)).

In this case, the district court summarily dismissed Olsen’s petition for post-conviction relief after rejecting his double jeopardy claim.² (R., pp.34-41.) The court concluded that the state’s utilization of the same prior DUI convictions to elevate Olsen’s new DUI to a felony, and to charge him with the persistent violator sentencing enhancement, did not violate Olsen’s double jeopardy rights. The court’s conclusion was correct for several reasons.

First, the application of both I.C. § 18-8005(6), which enhanced Olsen’s DUI to a felony in light of his prior DUI convictions, and I.C. § 19-2514, the persistent violator enhancement statute, did not constitute “multiple punishments” under the Double Jeopardy clause. Idaho Code § 18-8005(6) enhanced Olsen’s *charge*, whereas I.C. § 19-2514 enhanced his *sentence*. Olsen was thus sentenced and punished only once for his most recent felony DUI conviction.

Additionally, statutory sentencing enhancements do not constitute separate crimes and thus separate punishment for the same conduct. State v. Galaviz, 104 Idaho 328, 330, 658 P.2d 999, 1001 (Ct. App. 1983) (“The rationale the courts generally have adopted, in upholding enhanced penalty statutes, is

² The court did not discuss other apparent grounds for dismissal, including I.C. § 19-4901(b), which provides that any issue which could have been raised on direct appeal, but was not, is generally forfeited and may not be considered in post-conviction proceedings.

that the statutes do not provide for multiple penalties but rather provide for a single more severe penalty..."); see also State v. Ewell, 147 Idaho 31, 205 P.3d 680 (Ct. App. 2009) (citing numerous cases rejecting the misconception that statutory sentencing enhancements are separate offenses with separate penalties from the underlying offense.).

The Idaho Supreme Court rejected an argument similar to Olsen's in State v. Salazar, 95 Idaho 650, 516 P.2d 707 (1973). In Salazar, the Court held that the same prior convictions could be utilized to sustain two separate prosecutions in which the offender's sentence was subjected to the persistent violator sentencing enhancement. Id. It logically follows that the use of a prior conviction to establish both a persistent violator charge and a felony DUI enhancement also does not constitute double jeopardy. See also State v. Leslie, 146 Idaho 390, 392, 195 P.3d 749, 751 (Ct. App. 2008) (rejecting claim that a prior misdemeanor DUI enhanced due to an excessive BAC cannot later be used to enhance a misdemeanor DUI to a felony).

Finally, even to the extent that both I.C. §§ 18-8005(6) and 19-2514 could be considered "sentencing enhancements" in the context of a double jeopardy analysis, a review of the applicable statutory provisions reveals statutory authority for the application of both. In State v. Kerrigan, 143 Idaho 185, 187-188, 188, 141 P.3d 1054, 1056-1057 (2006), the Idaho Supreme Court held that two sentencing enhancements could be applied to the same charge because the district court had statutory authority for each sentence enhancement "considered separately." As the Court recognized, the enhancement statutes at issue

contained no language prohibiting both enhancements from being applied to a sentence for a single substantive crime, and application of both enhancements served the legislature's intent to deter the conduct proscribed by each of them. Id.

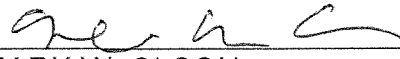
In the present case, the district court also had statutory authority for both the charging enhancement of I.C. § 18-8005(6) and the sentencing enhancement of I.C. § 19-2514, considered separately. The statutes at issue contain no language prohibiting both enhancements from being attached to a single substantive crime. Additionally, the two enhancements are not duplicative. The DUI *charging* enhancement statutes serve the legislature's purpose of removing repeat DUI offenders from the roadways and deterring other potential multiple DUI offenders. Leslie, 146 Idaho at 392, 195 P.3d at 751. The persistent violator enhancement statute serves the legislature's purpose of deterring felony recidivism by subjecting recidivists to more severe punishment than a first-time offender would be. State v. Helms, 143 Idaho 79, 81, 137 P.3d 466, 468 (Ct. App. 2006). Accordingly, application of both enhancements to the single substantive offense of DUI in this case serves the legislative purpose of deterring the distinct conduct proscribed by each of them.

Because enhancements are not sentences constituting separate punishment, and because Olsen was only punished once in conjunction with his most recent DUI conviction, his claim that his sentence violates double jeopardy is without merit. He therefore cannot show that the district court erred by summarily dismissing his post-conviction petition.

CONCLUSION

The State respectfully requests that this Court affirm the district court's summary dismissal of Olsen's petition for post-conviction relief.

DATED this 3rd day of March, 2014.



MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of March, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy to be placed in the United States mail, postage pre-paid, and addressed to:

JAMES OLSEN, #17304
ISCI 13C 60
P.O. Box 14
Boise, ID 83707



MARK W. OLSON
Deputy Attorney General

MWO/pm